

FILED 09 JUL 15 15:01 USDC-OR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN JOSEPH BURNS,

Petitioner,

Civil No. 09-450-CL

v.

REPORT AND
RECOMMENDATION

WARDEN J.E. THOMAS,

Respondent.

CLARKE, Magistrate Judge.

Petitioner, an inmate at FCI Sheridan, filed a petition under 28 U.S. C. § 2241 alleging "respondent's refusal to comply with my Doctor's prescribed treatment plan for my diabetic condition subjects me to a cruel and unusual punishment in violation of my rights secured by the U.S. Constitution, Eighth Amendment." Petitioner did not pay a filing fee or file an application to proceed in forma pauperis.

By Order (#4) entered May 4, 2009, petitioner was advised that his petition was properly construed as a civil rights

complaint and allowed 30 days to either pay the \$350 filing fee applicable to civil actions in this court or to file an application to proceed in forma pauperis.

Petitioner filed "Objections" (#5) to the order requesting reconsideration and reversal of the court's construction of the petition as a civil rights complaint. By Order (#6) the court's Order (#4) was affirmed.

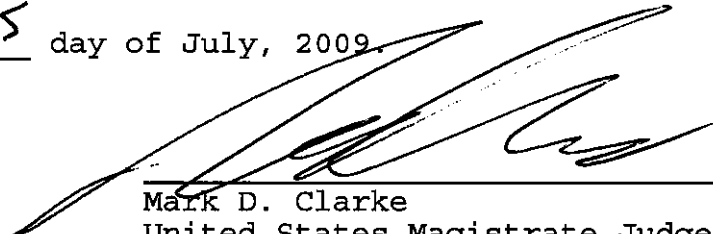
By Order (#8) entered June 4, 2009, petitioner was allowed 30 days to either pay the filing fee or to file an application to proceed in forma pauperis and advised that failure to do one or the other would result in the dismissal of this action for failure to prosecute.

Petitioner has not paid the filing fee or filed a application to proceed in forma pauperis or otherwise responded to the court's order. Accordingly, for the reasons previously set forth petitioner's petition should be dismissed for failure to comply with the court's order to file an amended pleading and for failure to prosecute.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have ten

(10) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 15 day of July, 2009.



Mark D. Clarke
United States Magistrate Judge